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STATE OF ALABAMA

SEP 25 1989

Honorable Michael F. Bolin
Probate Judge
Probate Court of Jefferson County
110 Courthouse
Birmingham, AL 35263-0068

Legitimation - Juveniles - Death

A declarant may petition the
probate court to legitimate a
child who dies at birth.

Dear Judge Bolin:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

Can a declarant petition the probate court
to legitimate a child who dies at birth?

FACTS AND ANALYSIS

It was stated in your request that you, as the Probate
Judge of Jefferson County, have been asked to entertain a
declaration of legitimation filed by residents of Jefferson
County. The declarant seeks to legitimate a surviving twin as
well as the twin who died at birth.

The procedure for legitimation of a child by written
declaration of the father is found at Code of Alabama 1975,
§ 26-11-2. It provides in pertinent part:

"(a) A father of a bastard child may seek to legitimate it and render it capable of inheriting his estate by filing a notice of declaration of legitimation in writing attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age and the name of mother and that he thereby recognizes it as his child and capable of inheriting his estate, real and personal, as if born in wedlock. The declaration, being acknowledged by the maker before the judge of probate of the county of the father's residence or the child's residence or its execution proved by the attesting witnesses, shall be filed in the office of the judge of probate of the father's residence or the child's residence."

Section 26-11-2(b) and (c) further state that notice of the filing of such declaration is given to the mother and the child. If the mother files an objection or if the probate court deems it to be in the best interest of the child, a guardian ad litem is appointed to represent the child. An informal hearing is held where all interested parties may present evidence, after which the court issues an order of legitimation or denial of declaration of legitimation. Upon legitimation a certified copy of the minutes of the court is sent to the bureau of vital statistics of the state board of health and to the registrar of vital statistics in the county where the petition was filed.

I cannot find anything in this provision or elsewhere that would prohibit a father from filing a petition to legitimate a child who dies at birth.

CONCLUSION

A declarant may petition the probate court to legitimate a child who dies at birth.

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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:


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